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**U.S. DEPARTMENT OF THE INTERIOR BIA**  
**INDIAN TRADER REGULATIONS TRIBAL CONSULTATION,**  
taken at Seneca Allegany Resort & Casino, 777  
Seneca Allegany Boulevard, Salamanca, New York  
on August 28th, 2017, before Rebecca DiBello,  
RPR.

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1           ACTING ASSISTANT SECRETARY BLACK: It's  
2 a pretty small group. We'll keep it fairly  
3 informal. We do have a court reporter here to  
4 collect all your comments. When you make a  
5 comment please say your name so that she can  
6 record it.

7           I'm Mike Black, Acting Assistant Secretary  
8 for Indian Affairs for the time being. So I'm  
9 kind of hitting this a little cold. I just  
10 found out yesterday I would be doing this, so  
11 we'll run through the slides and hopefully you  
12 guys get some background on this.

13           We did some presentations on this then in  
14 February and March and got some comment.  
15 Those comments were used to generate where we  
16 are today, so we're getting a little bit more  
17 of a conceptual idea of what we're going to be  
18 doing here and how we're going to move  
19 forward.

20           Gavin has been pretty much the lead on  
21 this and he'll continue to do so, but really  
22 looking at some opportunities and one of the  
23 big things he wanted me to ask everybody was

1 to talk about any opportunities that may have  
2 been missed because of some of the  
3 restrictions and limitations that have been  
4 placed on the Indian Country, so if there is  
5 economic development projects that if some of  
6 the changes made to this rule would have  
7 benefitted and been out there, what are those  
8 things?

9 And you'll see I think in the letter that  
10 we sent out he asked specifically for some of  
11 that information, so if you know of any of  
12 that or any of your tribes had some projects  
13 or stuff that may have happened if this rule  
14 wasn't the way it is, then please, we're just  
15 asking that everybody provide some of that  
16 information.

17 These are just an overview. Secretary  
18 Zinke has stated and reiterated that in his  
19 mind sovereignty needs to mean something. He  
20 talks about self-determination and  
21 self-governance and how he fully supports all  
22 of those efforts. Respect for our Indian  
23 nations, economic freedom and empowerment and

1 a reduced regulatory burden.

2 So I think that's part of the effort here  
3 we're talking about. This reg hasn't been  
4 updated since 1957, so if you look at it, and  
5 I read through it here a while back. It's one  
6 of the most antiquated things I have seen in a  
7 long time, back in the old days of the BIA and  
8 how we would basically tell tribes how they  
9 needed to conduct their business and do their  
10 things and it's so antiquated right now, I  
11 don't know if it's really effectual.

12 Sovereignty has to mean something. And so  
13 I think what we're trying to show here is  
14 really so you have direct service tribes, you  
15 have 638 tribes, you have self-governance  
16 tribes and everything in between, so you have  
17 those tribes that have made that determination  
18 for themselves that they prefer to have the  
19 services provided by BIA or some of the  
20 services provides by BIA and some of them they  
21 contract through 638 or self-governance, all  
22 the way to the tribes that are fully  
23 self-governing that basically take on all of

1 the programs for BIA and everybody in between.

2 And we as the Indiana Affairs need to  
3 respect all of that and that full gamut of  
4 selection and I keep telling people and new  
5 politicals when they come in they talk about  
6 self-determination and self-governance direct  
7 service is still fulfilling self-determination  
8 for the tribes that made that decision that's  
9 how they want their services to work, so those  
10 are some of the messages I try to make sure we  
11 get across to people as they come in.

12 Economic development. How can we best  
13 help tribes be self-sustaining? That's one of  
14 the efforts of this rule is if we can make  
15 some of the changes there effecting taxation  
16 and stuff that it will be a bigger benefit for  
17 the economic development of Indian Country.

18 This is another thing Gavin wanted me to  
19 kind of emphasize is when Indian Country  
20 prospers the surrounding communities prosper,  
21 so that means when more tribes are successful  
22 that carries over into the community and I  
23 think you see that a lot, at least with Indian

1 tribes and other tribes that have large  
2 economic development projects and programs  
3 going on that it does spill over into the  
4 local community and fire protection, law  
5 enforcement, education, medical facilities and  
6 stuff that tribes are able to do when they  
7 have successful economic development.

8 Then there's, of course, energy  
9 development. There's another one. Oil and  
10 gas is the one most people think of right off  
11 the bat, but you have renewable energy  
12 projects out there, you have coal, you have  
13 natural gas. There's a lot of different  
14 projects. You know, fortunately or  
15 unfortunately, not as many tribes have the  
16 ability to participate in that. If you don't  
17 have the resources for conventional oil and  
18 gas out there you can't really jump into that  
19 arena, but there are other areas like  
20 renewable and biomass that can benefit some  
21 tribes out there.

22 Tribal empowerment. How can we better  
23 empower tribal leaders and how can we best

1 return economic sovereignty to the tribes?  
2 Those are some of the questions that I think  
3 we're looking to garner input on as far as  
4 this whole overall effort on the Indian Trader  
5 Act and how can these better be used to allow  
6 tribes to make decisions for themselves and  
7 how can we more or less get out of the way.

8 How can we reduce our footprint out there  
9 to a degree where we're not in the tribes' way  
10 with some of the regulations and some of the  
11 things we have to do.

12 Human capital development. Best way to  
13 invest in Native people. Not just college  
14 education, but skilled trades. Again going  
15 back to the mantra states are better off when  
16 Indian Country's workforce is better educated  
17 and trained. And a long term strategy for  
18 economic development and self-governance  
19 simultaneously.

20 There we're talking about the fact that  
21 there have been a lot of efforts here, a lot  
22 of tribes are making sure that they are  
23 educating their communities and their members,

1 but it's not always just education. We need  
2 skilled work forces. We need welders,  
3 carpenters. How do we develop those programs  
4 to better enable the tribes? There again it  
5 goes all the way back to self-sufficiency and  
6 self-determination.

7 These are some of the comments and stuff  
8 that we received through the initial round of  
9 consultations back in February and March. We  
10 talked about the old statute, outdated  
11 regulations which I referenced a little bit  
12 earlier. I think it's been since 1957 was the  
13 last time these were updated.

14 The original legislative intent of the  
15 excluded states, federal common-law cases  
16 breached that exclusivity. Federal and state  
17 regulations compound. Indian Country suggests  
18 that -- these are all based on the comments  
19 right, Ashley?

20 MS. FRY: Yes, yes.

21 ACTING ASSISTANT SECRETARY BLACK: So  
22 basically Indian Country suggests give the  
23 tribes the exclusive ability to tax and

1 regulate trade within their reservations and  
2 within their communities. Allow tribes to opt  
3 out of the federal regulations and regulatory  
4 oversight.

5 There again, I think there is probably  
6 some opportunities especially in this  
7 administration to look at some of those  
8 regulations and some of that framework and is  
9 there opportunities for Indian Country to say  
10 we want to opt out of that, we want to take  
11 control of our business and for ourselves.

12 Replace an uncertain taxation system with  
13 a jurisdiction based system basically just  
14 like the states, so giving your sovereign  
15 nation the sovereign ability to perform their  
16 own taxing. What would the sovereignty look  
17 like under -- back to the same thing.

18 I think it's going to vary depending on  
19 where you are, how I want to say the capacity  
20 that individual tribes have varies across  
21 Indian Country from those that have the  
22 capacity to operate multimillion dollar  
23 enterprises to those that are still trying to

1 get that capacity built to build that  
2 administrative capacity to be able to handle  
3 those things, so I think there again we have  
4 to work through that full gamut all the way  
5 from the direct service tribes to the fully  
6 self-governance tribes.

7 State tax under regulations is one way to  
8 help with that. Talking about the federal  
9 regulations and the opportunity to possibly be  
10 able to opt out of some of that. Here we want  
11 to work together with Indian Country to  
12 develop any changes to these regulations that  
13 may be implemented so you have the Dear Tribal  
14 Leader letter which I think spelled out some  
15 of the stuff we're hoping to get back as far  
16 as feedback and data that will better allow us  
17 to justify any changes to the regulations.

18 Here again we're going to the information  
19 on projects that are not happening that would  
20 happen in a new regulatory environment, so  
21 asking for capital expenditures, annual  
22 revenues and jobs and if you have any economic  
23 impact studies that would help to support

1           that, there again they are asking to have some  
2           of that information provided as well and, of  
3           course, our treaty obligations.

4           We have trust and treaty obligations to  
5           tribes across the country. Are some of those  
6           things being affected by our inability to get  
7           these regulations changed or would there be  
8           improvement in that? That's what we're  
9           thinking, so now I want to hear what you all  
10          think.

11          That's a quick rundown. We don't have a  
12          reg in place or a draft of anything right now.  
13          We are in the conceptual stage so we've  
14          gathered some input on the original ANPRM and  
15          what we're looking for now is additional input  
16          to really be able to start to scope this out  
17          and get us to the point of having a regulation  
18          that, number one, replaces an antiquated  
19          regulation and that would also benefit the  
20          Country. Ashley, anything I missed?

21          MS. FRY: The deadline to get written  
22          submissions in is August 30th. I have  
23          distributed the original Dear Tribal Leader

1 letter that does outline what the specifics  
2 are that we've been asking tribes for.

3 And we've also been asked if we have a  
4 template that can be used. We don't. So  
5 whatever way that you want to send us the  
6 information, we will take it and then we will  
7 then transform it into what we need, but give  
8 us whatever you have in whatever form you  
9 have.

10 ACTING ASSISTANT SECRETARY BLACK:  
11 There's an email address and stuff in the Dear  
12 Tribal Leader letter.

13 MS. FRY: And there's a physical address  
14 as well.

15 ACTING ASSISTANT SECRETARY BLACK: With  
16 that, do you guys have any comments,  
17 questions?

18 MR. CRANE: This is Sean Crane. I'm  
19 with the Seneca Nation of Indians. I guess  
20 the main reason I was sent here is, it's  
21 already in your presentation, is just  
22 reiterate that the Seneca Nation wants  
23 exclusive ability to tax and regulate trade

1 and commerce that occurs on our land.  
2 Economic development, that's really crucial.

3 Also, we would like to opt out of  
4 oppressive federal regulatory oversight of  
5 some of the activities that occur on our lands  
6 and replace an uncertain taxation system with  
7 a jurisdiction-based system just like states.

8 The Seneca Nation is somewhat unique.  
9 Some of our obstacles we face, I don't know if  
10 you're familiar with Salamanca, how it's a  
11 leased based system. Actually, the city is  
12 leased to non tribal members, so the state  
13 thinks they can come in and just run it just  
14 like any other city, but if you look at the  
15 legislation that's not really true, but what  
16 we would like to see is we have our own  
17 economic development commission and we tried  
18 to get businesses into this area, franchises  
19 and things, and then they look here and  
20 they're not that interested because there's a  
21 town just east of here in Olean and just west  
22 in Jamestown and there's really no benefit  
23 that they see coming here, but what we see is

1 businesses -- this is tribal land even though  
2 some of it is leased to non tribal individuals  
3 and businesses.

4 We should be able to have the capacity to  
5 and the ability to determine the taxation of  
6 this land and if we -- actually, the Seneca  
7 Nation is very much anti taxation. We don't  
8 have a tribal tax, but that's our prerogative.

9 I mean, people here at back to school time  
10 they travel to Pennsylvania because  
11 Pennsylvania -- Erie, Pennsylvania does not  
12 charge sales tax on clothing so the State of  
13 Pennsylvania can make that decision that they  
14 are not going to charge tax on clothing and  
15 they get people from out of state coming in  
16 just based on that.

17 Well, we believe we should have the same  
18 capability, we can determine that we're going  
19 to -- if there is any tax we'll set it or if  
20 there is no tax, that's our determination, and  
21 that would attract businesses and customers to  
22 -- that would be an advantage in this area.

23 I don't know if you've had a chance to

1 drive through Salamanca, over than a few smoke  
2 shops and a few greasy spoons, there's not a  
3 lot going on economically here and the casino  
4 is pretty much it.

5 The other thing is how these Indian Trader  
6 Regulations effect us. I guess they don't  
7 effect us so much as we tried to make argument  
8 in years past with this case called the Attea  
9 case where the state was promulgating  
10 regulations and what they were basically doing  
11 is going after the wholesalers, the  
12 distributors, and tax them ahead of our smoke  
13 shop operators and what the distributors and  
14 wholesalers did is got their Indian Trader  
15 licenses and made the argument that federal  
16 law prohibits state regulations, but the  
17 courts didn't see it that way, but I think  
18 they got it wrong.

19 If this Indian Trader Act is a federal act  
20 it should preempt state actions on that. If  
21 somebody is going to trade with the tribes,  
22 with the Nations, the state shouldn't be able  
23 to put it's hand in there and disrupt that,

1 but that's not how the courts saw it.

2 But other than that, most of our  
3 businesses are run by Nation members. We  
4 don't have -- other than this unique situation  
5 in Salamanca, we have other territories, but  
6 by and large they are smoke shops or small  
7 restaurants so there are not a lot of non  
8 tribal members other than here in Salamanca  
9 running businesses, but I guess just to repeat  
10 or reiterate, the biggest takeaway that the  
11 Seneca Nation would like you to have today is  
12 we would like exclusive ability to tax and  
13 regulate trade and commerce that occurs on  
14 restricted land. We believe that's our right.

15 ACTING ASSISTANT SECRETARY BLACK:

16 Great, thank you. It would be helpful if you  
17 could provide some information related to that  
18 case and the wholesalers getting the licenses  
19 and how that effected it and I think I'm going  
20 to the request that -- Gavin had people write  
21 in information about how some projects aren't  
22 happening because of the way the regs are  
23 written out and any recommendations you might

1 have as far as how can we change those regs.

2 MR. CRANE: Maybe that would get played  
3 out in the courts, but if it did say  
4 specifically that these regulations preempted  
5 or if you went back to the actual statute that  
6 it preempts state law that might help. I  
7 don't know if the courts will still see it the  
8 same way they do, but I guess it's out there  
9 now.

10 KITCKI CARROLL: Kitcki Carroll,  
11 Executive Director of United South and Eastern  
12 Tribes Sovereignty Protection Fund. I want to  
13 offer some comments leading off that last  
14 comment. So our organization has a position  
15 that all profits and all revenues generated  
16 within the jurisdiction of Indian Country  
17 should stay within the jurisdiction of Indian  
18 Country.

19 But a couple of thoughts I want to add to  
20 this conversation is one more broadly one of  
21 the slides spoke to sovereignty needs to mean  
22 something. We've heard that repeatedly in  
23 this new administration.

1           One of the things that we've sent a  
2 letter off and asked for was an executive  
3 order from President Trump and a secretarial  
4 order from Secretary Zinke speaking to their  
5 position on U.S. Tribal relations. We don't  
6 have anything on that, so we don't know where  
7 they stand on that.

8           The only thing we have to date right now  
9 that is an expression of this administration  
10 in terms of how it stands is the fiscal year  
11 '18 budget and fiscal year '17 signing  
12 statement which both were troubling, but I  
13 would say in the same way we're talking about  
14 sovereignty meaning something, fulfilling  
15 trust obligations should mean something as  
16 well.

17           In terms of this issue that we're talking  
18 about right now, we also have a resolution  
19 speaking to the Indian Trader Regulations and  
20 our organization's position is any regulatory  
21 effort that would be supportive of  
22 strengthening economic development in Indian  
23 Country, we would like to see happen.

1           However, our board has been very clear they  
2           think the greater fix exists within the  
3           statutory side.

4           We understand that's a bigger lift, but we  
5           understand that reversing things such as -- I  
6           guess the concern we would have is that Indian  
7           traders seek to trade from non Indian traders  
8           to Indians on Indian land and that's what the  
9           courts have spoken to. It hasn't spoken to  
10          this idea of non Indian traders selling to non  
11          Indians on Indian land, so it doesn't speak to  
12          that at all, so it is ripe from our  
13          perspective for a legal challenge and this  
14          would be the first time the tribes are having  
15          legal challenges in the area of taxation so we  
16          are very interested to know what the  
17          solicitor's position on this is.

18          And there are many cases going on right  
19          now in this area of state taxation, dual  
20          taxation where that's not there so we would  
21          want to make sure as this proceeds that there  
22          are some sort of solicitor's opinion on where  
23          they think the legal basis is for this and how

1           ripe it is for challenges.

2                    ACTING ASSISTANT SECRETARY BLACK: Thank  
3           you. Kevin, do you have any comments?

4                    MR. WADZINSKI: I'm Kevin Wadzinski with  
5           the law firm of Powers Pyles in D.C.  
6           representing the Tunica-Biloxi tribe of  
7           Louisiana and I would first comment that I  
8           really applaud the Department for what it's  
9           doing here and that is taking an old  
10          regulation that was designed in some respects  
11          to, in a very paternalistic way, protect  
12          tribes perhaps from a people that should not  
13          be doing business with tribes and turning it  
14          into a modern day vehicle or tool that would  
15          allow for a meaningful economic development on  
16          tribal land.

17                   As we saw in the slides, there are really  
18          two components to this; promoting economic  
19          development, but also promoting what is  
20          referred to as tribal economic sovereignty.  
21          So to me that means let's figure out a way to  
22          get capital in the Indian Country which then  
23          generates business revenues, creates jobs.

1           Hopefully the majority of those revenues will  
2           flow to the tribe to then support governmental  
3           programs.

4           The other component that I see is tribal  
5           economic sovereignty. Right now,  
6           unfortunately, unless a tribe is able to reach  
7           an agreement with the surrounding community  
8           tribes don't have full economic sovereignty  
9           because of the tax issue, and it's one thing  
10          to work with a private lender or a potential  
11          partner to get that capital into the  
12          reservation and on Indian land, but even then  
13          it's not uncommon for that lender or equity  
14          investor to contractually require the tribe to  
15          forego any tribal taxation.

16          Given that, there is likely to be some  
17          form of state or local taxation and I think  
18          that position taken by the lender or equity  
19          investor is not unreasonable because there is  
20          an asset that is generating the revenue to  
21          repay the lender or to get some type of return  
22          on the equity investor's investment.

23          If it's taxed it's not going to be in the

1 same amount. There are potentially ways that  
2 contractually those parties can reach mutual  
3 agreement. Where it's difficult is when the  
4 parties can't control other factors that  
5 influence whether or not the business is going  
6 to be successful and that is again the  
7 taxation issues. The tribe and a lender, a  
8 tribe and an equity investor, they can't alter  
9 state or local taxation and when you look at  
10 it from just a fairness perspective, I think  
11 everyone would agree that if a tribe is taking  
12 a risk and a private investor or the lender to  
13 generate an economy on the reservation, I  
14 think one needs to ask why would the economic  
15 sovereignty flow to any government other than  
16 the tribe?

17 So those are my comments and I think what  
18 the department is doing here is very, very  
19 encouraging and I hope when this process is  
20 completed we will have a dramatically  
21 different regulation, but I again think it's  
22 so encouraging just the concept that you all  
23 have right now to change the focus of this

1 reservation.

2 ACTING ASSISTANT SECRETARY BLACK: Thank  
3 you.

4 KITCKI CARROLL: One additional thought  
5 that I would have in speaking specifically to  
6 Indian trade or economic development more  
7 broadly, there needs to be an effort to think  
8 about it comprehensively. So by that I mean  
9 if the administration -- and they are  
10 expressing their prioritization of economic  
11 development in Indian Country by way of an  
12 example with this Indian trading commerce  
13 regulation, it's part of a broader economic  
14 development.

15 He just mentioned capital as part of that  
16 equation or access to the capital as part of  
17 that equation and the treasury came up with a  
18 report about various economic development in  
19 Indian Country and one of those is actually  
20 capital. One of the solutions to that or  
21 responses to that has been the native CDFI to  
22 make sure there is an avenue for tribes to  
23 explore to address that as well as the EDA

1           that many of our tribes are making use of EDA  
2           including Seneca here, but in the fiscal year  
3           '18 administration budget both CDFI and EDA  
4           were zeroed out, so if there is going to be a  
5           prioritization of economic development in  
6           Indian Country that needs to be all aspects of  
7           it and to think about this more broadly, so we  
8           would ask that the administration as the DIPT  
9           is having conversations about economic  
10          development that it is making sure it's doing  
11          it comprehensively and all pieces are working  
12          properly and not just elements of it.

13                    ACTING ASSISTANT SECRETARY BLACK:    So  
14           basically going beyond what this regulation is  
15           going to do.

16                    KITCKI CARROLL:    Well because, you know,  
17           our Indian Country broadly, excluding us,  
18           there was a tribal leaders tax summit that was  
19           held back in 2012, 2013 down in Miccosukee and  
20           that was the most current effort for tribes to  
21           come together to prioritize what their tax  
22           priorities are.    Yusef was part of that  
23           effort.

1           We have since developed a very broad and  
2           comprehensive tax priorities platform. GWE  
3           was top priority for that when we were  
4           involved in that, but our tribes know that the  
5           issue that has greatest economic impact is  
6           this issue of state taxation and dual  
7           taxation. Many of our tribes are already  
8           dealing with legal challenges in the courts in  
9           this area already, so I guess we support any  
10          efforts that's going to try to fix that and we  
11          feel that even though we are expressing  
12          concerns, there is -- we feel this is ripe for  
13          some legal challenges here in terms of  
14          interpretation of Indian trade.

15          That aside, if it were to be fought back  
16          in courts that it would need some progress in  
17          in that arena. However, our tribes including  
18          Seneca -- Seneca president actually served as  
19          a cochair for our tax committee within our  
20          organization. They have made it very clear to  
21          us that they want a statutory fix to state and  
22          dual taxation and to achieve certain  
23          jurisdiction because we know that the second

1           this starts getting discussed out there states  
2           are going to be concerned.

3           We hear that already in other areas.  
4           Whenever there's a dollar talked about in the  
5           tax roll base that becomes a great concern and  
6           they put all of their muscle behind trying to  
7           push that back, so we would hope whatever  
8           actions this administration is taking there is  
9           also a commitment with that to be with us on  
10          those legal challenges when they come.

11          Not if they come, but when those come,  
12          that they are there to stand by our side which  
13          is why I think it's important early on in this  
14          stage for the solicitor's department to speak  
15          up and express where they think the legal  
16          support is for moving forward with this.

17                    ACTING ASSISTANT SECRETARY BLACK: Thank  
18                    you.

19                    MR. WADZINSKI: Kevin again just a  
20                    question and I know you're filling in for Dr.  
21                    Clarkson so you may not have the answer, but  
22                    what is your best guess as far as timing for  
23                    publication of a proposed rule?

1           ACTING ASSISTANT SECRETARY BLACK: Well,  
2           let me have Ashley answer that for you.

3           MS. FRY: So I think that once we get  
4           the information from tribes and are able to  
5           kind of come up with the economic argument for  
6           updating the regulation, we're looking for a  
7           proposed rule to be published hopefully before  
8           the end of this calendar year.

9           MR. WADZINSKI: Thank you.

10          MS. FRY: You're welcome.

11          MR. WADZINSKI: I have another question.  
12          In addition to what is set forth in the Dear  
13          Tribal Leader request and the additional  
14          information, is there any other information  
15          that the Department would find helpful to  
16          justify the proposed rule?

17          MS. FRY: So when we did the AMPRN there  
18          were questions in that publication as well,  
19          but I think what we're looking to now and as  
20          far as like what the new administration is  
21          focused on is really the economic impact of  
22          the current regulations.

23          MR. WADZINSKI: Thank you.

1 MS. FRY: You're welcome.

2 ACTING ASSISTANT SECRETARY BLACK: Has  
3 there been any discussion, Ashley, about any  
4 other information?

5 MS. FRY: Not so far. What Gavin and  
6 what the Department is really wanting is all  
7 of these missed opportunities, so if we can  
8 make the economic argument that these current  
9 regulations are not allowing tribes to develop  
10 projects, develop economic opportunities, on  
11 their land, then the thinking is that going  
12 forward we can use that to develop new  
13 regulations that will hopefully change that  
14 status.

15 MR. CARROLL: Kitcki Carroll again. I  
16 raised this in a prior session so I want to  
17 put it on the record for our region. This is  
18 not -- this is also not an and/or conversation  
19 either, and by that I mean one of the  
20 questions, comments that came up in a prior  
21 consultation session was a notion that so  
22 let's just say that we could achieve  
23 everything we want or we want to achieve tax

1           certainty in jurisdiction in every province,  
2           and every state of Indian Country. That in no  
3           way negates the federal government's trust  
4           obligations in terms of the money that's  
5           provided.

6           That came up in conversations before that  
7           suggests that if you could achieve tax  
8           certainty jurisdiction that that would lessen  
9           the need on federal trust fiduciary  
10          obligations, and they are completely different  
11          from one another so I want to state that.

12          And the other thing is I pose it as a  
13          comment, but I want to pose it as a question  
14          now. The solicitor's office was involved in  
15          this conversation towards the last  
16          administration when this was introduced as a  
17          concept. I haven't heard anything though  
18          where the solicitor's office stands now on  
19          their interpretation and has that happened  
20          yet? Have conversations happened where they  
21          have expressed their opinion one way or  
22          another on the legal basis of this argument?

23          MS. FRY: The solicitor's office is

1 definitely involved in this whole process.  
2 They are working with us to develop a proposed  
3 rule so --

4 KITCKI CARROLL: You say they are in  
5 agreement that this would then extend to non  
6 Indian traders selling goods to non Indians on  
7 Indian land?

8 MS. FRY: I don't want to go too far in  
9 expressing their opinions because that's a  
10 little bit outside of my purview, but I do  
11 want to state that they are involved in the  
12 process.

13 KITCKI CARROLL: Fair enough.

14 ACTING ASSISTANT SECRETARY BLACK: I  
15 think the answer probably is they haven't  
16 necessarily generated a position, but they are  
17 helping to draft the regulations moving  
18 forward to make sure that it's a defenseable  
19 regulation.

20 KITCKI CARROLL: And that's my point.  
21 Right. The only reason I'm raising that is we  
22 just want to know where they are because when  
23 the legal challenge comes they are going to

1           need to be there by our side to make the legal  
2           argument.

3           MS. FRY: We don't want to put out  
4           regulations that aren't admissible.

5           ACTING ASSISTANT SECRETARY BLACK: Have  
6           we missed anything, Ashley?

7           MS. FRY: No. This is really just an  
8           information gathering this session, so if you  
9           all have additional questions or concerns, I  
10          think that we've put out all the information  
11          from our perspective.

12          MR. WADZINSKI: Kevin again. I have  
13          another question. A few months ago there was  
14          a hearing before the House Resource Committee,  
15          the full committee, and a number of members  
16          raised questions about the Department's  
17          efforts in connection with revising the Indian  
18          licensed traders regulations.

19          I was wondering if the Department had any  
20          comments about those particular questions. I  
21          guess I would call them concerns, but I think  
22          they were questions about ultimately the  
23          intent of the Department with respect to these

1 regulations.

2 ACTING ASSISTANT SECRETARY BLACK: Well,  
3 I think that's the hearing Mr. Casson did.

4 MR. WADZINSKI: Correct.

5 ACTING ASSISTANT SECRETARY BLACK: I  
6 think his answer would probably be the same  
7 position we're in now. I'm trying to remember  
8 exactly how he put it, but that this was an  
9 idea that we're looking at trying to garner  
10 input from Indian Country and deciding what  
11 direction we would take at that point. I  
12 think that's the gist of his response. Not as  
13 eloquent as he put it.

14 MR. WADZINSKI: Thank you.

15 KITCKI CARROLL: You brought it up in  
16 your overview I think. I know we're talking  
17 about part of the comments that are being  
18 sought for the August 30th deadline is some  
19 specifics in terms of experiences, various  
20 challenges that tribes are having at the  
21 individual level.

22 One of the things we would like to see  
23 from the broader economic development vantage

1 point which has eluded us up to this point is  
2 tribes and our federal partner. We have not  
3 been able to paint a great picture of the  
4 impact that strong tribal economies and  
5 revenue profits being generated in Indian  
6 Country and jobs have for surrounding non  
7 tribal communities.

8 I know Tunica a couple years ago tried to  
9 do some analysis on that just for their little  
10 area of the world, but we haven't been able to  
11 get a big picture of that economic impact and  
12 I think it would be very valuable to causes  
13 like this, efforts like this, if the  
14 Department would make a commitment through its  
15 economist position or positions -- I hear  
16 there's multiple now -- I'm not sure if that's  
17 true or not, but regardless, if there is an  
18 economic resource within the Department of  
19 Interior to assign some sort of responsibility  
20 to doing some analysis on its own.

21 Some tribes will be able to do that to  
22 some extent. Other tribes won't be able to do  
23 that at all, but we're leaning at this point

1 in time a better picture of what that impact  
2 is because we know it's happening. We need to  
3 be able to tell that story better.

4 MR. WADZINSKI: And I very much agree  
5 with your comment and perhaps one starting  
6 point would be actually looking at Google maps  
7 and my point here is if you go and look at an  
8 area from ten to fifteen years ago, assuming  
9 Google maps would have that information, and  
10 you see -- which typically is a tribal casino  
11 that is the generating force and you see the  
12 reservation boundary lines, adjacent to the  
13 reservation fifteen years ago you did not see  
14 any economic development.

15 Now you see various types of economic  
16 development and the irony there is the tribe  
17 created that opportunity, but the tribe does  
18 not partake in that economy other than people  
19 visiting there, also visiting the casino, but  
20 it works both ways but yes, again, looking at  
21 that map even though the tribe does not  
22 financially benefit from those revenues  
23 generated across the road from the

1 reservation, somehow that local jurisdiction  
2 does benefit if there's economic development  
3 on the tribe's reservation.

4 KITCKI CARROLL: We agree and that sort  
5 of information is going to be critical and  
6 necessary when states and local communities  
7 start pushing back. We're going to need to  
8 say what the actual dollar value is to them  
9 and what it would be without having that  
10 business enterprise.

11 ACTING ASSISTANT SECRETARY BLACK: If  
12 I'm gathering the point correctly, we're  
13 asking for information on opportunities that  
14 didn't happen because of the restricted  
15 regulations or taxation or something like  
16 that, but it's more than just that  
17 information.

18 It's how much of that money that would  
19 come in if things were changed would flow back  
20 to the community, and you're point of look at  
21 this casino right here in the small community,  
22 how much of an impact does that have on the  
23 community overall and if you're able to change

1           some of the taxation stuff how much more of an  
2           impact is that going to make?

3                   How do we collect that data I think is the  
4           question. I think it could be done,  
5           certainly.

6                   MR. CRANE: Shawn Crane again. The  
7           Seneca casinos employ over 4000 people in  
8           Western New York, most of them non tribal  
9           members so we're an economic engine and, I  
10          mean, we have a compact. We have issues now  
11          with the state regarding some terms of our  
12          compact, but that's just one part of the  
13          solution and one part of the pie, I mean, when  
14          you get other things going as far as economic  
15          development goes, but I think back just to hit  
16          the drum of preemption, if you can preempt the  
17          state from coming in and taxing us we can get  
18          a lot more done.

19                   We have certain advantages that we should  
20          have as a sovereign. Surrounding states do  
21          what they want to do. We should have the same  
22          treatment as the state, at least, but we don't  
23          have that. But also it just stifles the

1           problem of dual taxation which doesn't really  
2           apply to us at this point because we don't  
3           have a taxation system ourselves. We don't  
4           really believe in it, but I guess it hinders  
5           other tribal nations, but just the fact that  
6           the state comes in and tries to regulate and  
7           tax it stifles the economic development.

8           ACTING ASSISTANT SECRETARY BLACK: Thank  
9           you. Anything else you want to add? We do  
10          encourage you to provide any other written  
11          comments you'd like to submit by August 30th.

12          MS. FRY: I believe the letter it says  
13          by -- it might say midnight.

14          KITCKI CARROLL: So the second stage is  
15          really for the tribes themselves to respond to  
16          those answers. We don't have any first degree  
17          knowledge of the challenges that exist at the  
18          members levels so that's what we encourage  
19          that they know this is the subject you need to  
20          respond to.

21          MS. FRY: So there isn't a time, but if  
22          you get them in before 11:59 by August 30th  
23          we'll accept them.

1           ACTING ASSISTANT SECRETARY BLACK:  If  
2           there's nothing else, there's no sense keeping  
3           you.  Everyone has business to take care of.  
4           Anything you have any closing comments or  
5           anything you want to add?

6           KITCKI CARROLL:  I do want to reiterate  
7           the point of not specific to Indian trade, but  
8           it's really important for our members and the  
9           discussions that we're having.  We are eight  
10          months into this new administration.  We would  
11          like some clarity on where this administration  
12          is in terms of how to fuse the relationship  
13          with the Indian Country.

14          We sent off a letter last week or the week  
15          before asking the administration to issue an  
16          executive order on what its position is and  
17          then we asked for the secretary to issue a  
18          statement or an order on what his position is.

19          Like I said, all we have to go off of  
20          right now is the signing statement and fiscal  
21          year '18 budget which was not good from our  
22          standpoint and I know this is a new  
23          administration and I know it takes time to do

1           those things, but the earlier the better to  
2           give us a better sense.

3           Then my second point is as we are having  
4           this economic development conversation is that  
5           it's done in the broadest of terms, not in a  
6           vacuum, to make sure whatever we're doing on  
7           Indian trader which is attempting to be  
8           complimentary to the economic development and  
9           is important to the equation.

10                    ACTING ASSISTANT SECRETARY BLACK:

11           Appreciate that. Thank you for coming out  
12           this morning.

13

14                    (Proceedings concluded at 10:10 a.m.)

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1 STATE OF NEW YORK )

2 ) ss.

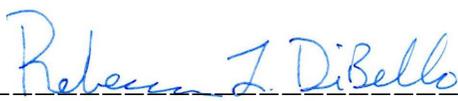
3 COUNTY OF ERIE )

4  
5 I, Rebecca Lynne DiBello, CSR, RPR, Notary  
6 Public, in and for the County of Erie, State  
7 of New York, do hereby certify:

8 That the witness whose testimony appears  
9 hereinbefore was, before the commencement of  
10 their testimony, duly sworn to testify the  
11 truth, the whole truth and nothing but the  
12 truth; that said testimony was taken pursuant  
13 to notice at the time and place as herein set  
14 forth; that said testimony was taken down by  
15 me and thereafter transcribed into  
16 typewriting, and I hereby certify the  
17 foregoing testimony is a full, true and  
18 correct transcription of my shorthand notes so  
19 taken.

20 I further certify that I am neither counsel  
21 for nor related to any party to said action,  
22 nor in anyway interested in the outcome  
23 thereof.

IN WITNESS WHEREOF, I have hereunto  
subscribed my name and affixed my seal this  
6th day of September, 2017.

20   
21 \_\_\_\_\_  
22 Rebecca Lynne DiBello, CSR, RPR  
23